

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: THE RHODES COMPANIES,) E-Filed: 12/23/12
5 LLC,)
6 Debtor.) Case No.
7) BK-S-09-14814-LBR
8) Chapter 11
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11 TRANSCRIPT OF PROCEEDINGS
12 OF
13 MOTION TO RECUSE JUDGE
14 TERMINATION JUDGE LINDA B. RIEGLE,
15 ADDING JUDGE,
16 WITH CERTIFICATE OF SERVICE, NO. 1598
17 AND
18 MOTION TO APPROVE COMPROMISE UNDER RULE 9019
19 WITH PROPOSED ORDER, NO. 1615
20 VOLUME 1
21 BEFORE THE HONORABLE LINDA B. RIEGLE
22 UNITED STATES BANKRUPTCY JUDGE

23 Friday, January 6, 2012

24 9:30 a.m.

25 Court Recorder: Deborah Hemstreet

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES:

2 For James Rhodes: KEVIN N. ANDERSON, ESQ.
3 Fabian & Clendenin
4 601 South Tenth Street
Suite 102
Las Vegas, Nevada 89101

5 For the Reorganized ABID R. QURESHI, ESQ.
6 Debtors: MEREDITH A. LAHAIE, ESQ.
Akin, Gump, Strauss, Hauer & Feld, LLP
7 One Bryant Park
New York, New York 10036

8 For the Rhodes JACOB J. ROBERTS, ESQ.
9 Companies Litigation Diamond McCarthy, LLP
Trust: Two Houston Center
909 Fannin Street
10 Fifteenth Floor
Houston, Texas 77010
11 (Telephonic)

1 (Court convened at 09:33:50 a.m.)

2 THE COURT: Be seated.

3 (Colloquy not on the record.)

4 THE COURT: All right. Rhodes Companies.

5 Appearances, please.

6 MR. ANDERSON: Kevin Anderson on behalf of

7 Mr. Rhodes.

8 MR. QURESHI: Good morning, your Honor. Abid Qureshi
9 and Meredith Lahaie, Akin, Gump, Strauss, Hauer & Feld, on
10 behalf of the reorganized debtors.

11 THE COURT: Okay. All right. On the first motion,
12 the motion to recuse, did you want to make any additional
13 arguments or --

14 MR. ANDERSON: I assume your Honor's had a chance to
15 review it. I think what I'd like to say is our concern is not
16 so much about what's happened in the past, but what's going
17 forward because we now have the Litigation Trust that is
18 seeking to investigate claims and bring claims.

19 And one of the most troubling statements that I read in
20 the transcript -- I wasn't at the hearing -- was from the
21 September 27th hearing where the Court actually suggested that
22 they consider bringing a fraudulent-conveyance transaction and,
23 you know, the Court's comment that the Court didn't see why it
24 wouldn't have been a fraudulent conveyance in that
25 circumstance.

1 That's exactly the type of claim that the Litigation Trust
2 is looking to bring, and my understanding is they're going to
3 be bringing it before the Court, and that's really what
4 prompted the motion to recuse. If your Honor has any questions
5 about any of the other aspects of the motion?

6 THE COURT: No.

7 MR. ANDERSON: Thank you.

8 MR. QURESHI: Good morning, your Honor.

9 Abid Qureshi, Akin, Gump, on behalf of the reorganized debtor.
10 We obviously have filed an opposition to the recusal motion.

11 Your Honor, I won't repeat for the Court what is in our
12 papers, essentially, a very high standard. We don't think it's
13 even close. I would like to respond, though, briefly to
14 Mr. Anderson's point.

15 With respect to a potential fraudulent-conveyance claim
16 here against Mr. Rhodes, respectfully, your Honor, that's
17 nothing new.

18 That certainly was nothing new at the time that your Honor
19 mentioned it. That's been something that's been, you know,
20 frankly, very obvious to the secured lenders here.

21 Earlier in the case, your Honor will recall that the way
22 this case commenced was with the filing of a Chapter 11 Trustee
23 motion by the secured lenders.

24 And there had been an investigation done prior to the
25 petition date of conduct that Mr. Rhodes had engaged in

1 prepetition.

2 And so the secured lenders, now the reorganized debtors,
3 were very aware as of day one of the case of possible causes of
4 action.

5 And it was very clear since the outset that ultimately
6 where this case would end up is where we are now on the verge
7 of which is the reorganized debtors actually commencing those
8 various causes of action against Mr. Rhodes.

9 So the suggestion if it is one that somehow the Trust is
10 now commencing these causes of action and a
11 fraudulent-conveyance claim, in particular, because your Honor
12 mentioned it or asked about it at a prior hearing, your Honor,
13 that just has no basis.

14 Again, those were, frankly, obvious causes of action that
15 were within our knowledge at the outset. So beyond that --

16 THE COURT: Okay.

17 MR. QURESHI: -- we'll rest on our papers.

18 Thank you.

19 THE COURT: All right. Thank you.

20 Any response to those comments?

21 MR. ANDERSON: I don't think that it matters that it
22 was obvious. I think that Mr. Qureshi actually helps make my
23 point.

24 Because the fraudulent conveyance was something that was
25 obvious and under consideration, what I have never heard from a

1 judge -- and I've been doing this over 30 years -- is a judge
2 to suggest to a party that they file a cause of action. That
3 they amend their lawsuit for a fraudulent conveyance.

4 I mean, maybe what he paid already is a fraudulent
5 conveyance. I don't see why it wouldn't be. That's what
6 troubles me because these claims -- everybody knows they were
7 coming.

8 Everybody knows that they're going to be filed before
9 your Honor, and we now have a statement where the Court has
10 predetermined it. That's what we find objectionable.

11 THE COURT: Okay.

12 MR. QURESHI: And I'm sorry, your Honor. If I may
13 just very briefly on that specific point just to direct
14 your Honor to the case law we've cited in our opposition? It's
15 at paragraph 6.

16 There is simply nothing wrong with the Court sua sponte or
17 in response to comments from counsel expressing a view on the
18 likelihood of a particular cause of action having merit or not
19 having merit.

20 Certainly, I don't think anything your Honor said here
21 comes even close to predetermining the outcome given that the
22 lawsuit hasn't even been commenced.

23 But the mere discussion of a potential cause of action
24 under the Ninth Circuit cases governing recusal, that just
25 doesn't come close to comments that would justify recusal.

1 And here given the length of time that we have been before
2 your Honor in one capacity or another -- I think we're at
3 something like three years -- there are I think in addition
4 some real judicial-efficiency concerns in terms of, you know,
5 having another judge get up to speed, et cetera.

6 Thank you.

7 THE COURT: All right. Thank you.

8 Well, I'm going to deny the motion. The things that I
9 said certainly don't meet the standard for judicial
10 recusal.

11 Kind of preliminary, you may not like me. You may not
12 respect me, but I've been doing this for 24 years, and I've
13 always, always, always applied the law under the facts. And
14 every time when people attempt to recuse, it's usually for
15 litigation strategy.

16 And as much as I would prefer passing this case on to
17 someone else for my own workload and my own sanity, that's not
18 fair to my colleagues. It's not fair to the judicial system.

19 It is appropriate -- I mean, there's nothing wrong with
20 the comments that were made in the sense that a Court can
21 always make a comment such as isn't this a such-and-such cause
22 of action.

23 It's my duty to make sure that all interests are
24 represented. It's my duty to make sure that everyone has
25 thought about all the facts and circumstances.

1 And, for example, the comment that Mr. Rhodes -- you know,
2 it's true. Everybody admits he was dishonest, for example, in
3 the Greenway claim about what he truly intended to do.

4 But just because somebody's dishonest in the white-lie
5 sense, it doesn't mean they're necessarily dishonest in the
6 legal sense, and that's the fine distinction to be made, I
7 mean, and the point is I set those matters for trial, so,
8 obviously, I hadn't prejudged those issues.

9 If and when a fraudulent-conveyance action comes, it will
10 be judged on the merits in accordance with the law, in
11 accordance with the facts, so I'm going to deny the motion.
12 All right. Let's take a recess.

13 THE CLERK: Thank you, your Honor.

14 (Colloquy not on the record.)

15 THE CLERK: All rise.

16 (Recess at 09:41:56 a.m.)

17 (Court reconvened at 09:48:26 a.m.)

18 THE CLERK: All rise. Bankruptcy court is back in
19 session.

20 THE COURT: Be seated.

21 MS. LAHAIE: Good morning, your Honor.

22 Meredith Lahaie, Akin, Gump, Strauss, Hauer & Feld, for the
23 reorganized debtors.

24 On an entirely different note, your Honor, the reorganized
25 debtors are happy to say that at long last we have reached a

1 settlement of at least some of the issues that the reorganized
2 debtors have been before this Court on in connection with
3 Mr. Rhodes.

4 THE COURT: Let me tell you about a number of my
5 concerns here that may require a continuance because I want
6 some more information and some more input, and let me tell you
7 my thoughts in general, and then if you have --

8 MS. LAHAIE: Okay.

9 THE COURT: -- answers now you can respond.

10 While I know this is an objection to claim, it's my
11 understanding that if and when an action is brought by the
12 liquidating trustee this would have a direct impact on the
13 liquidating trustee's rights because I understand that there's
14 a right of setoff, but two questions.

15 First is is the liquidating trustee agreeable to that
16 amount. Secondly, in a context of an adversary whomever may
17 hear that adversary, this question of setoff is an equitable
18 issue, so, question, what impact has the liquidating trustee
19 had in this compromise?

20 MS. LAHAIE: Your Honor, there are two impacts I
21 think that the overall settlement has --

22 THE COURT: What --

23 MS. LAHAIE: -- on --

24 THE COURT: What --

25 MS. LAHAIE: -- Litigation Trust.

1 THE COURT: I'm sorry. I just said impact. I didn't
2 mean impact. Two questions, impact and input has the
3 liquidating trustee had.

4 MS. LAHAIE: Your Honor, the first impact I was going
5 to address was the one that you were asking about which was the
6 amount of the setoff that we're seeking to give Rhodes an
7 allowed claim for which is the \$500,000 amount.

8 Your Honor, I'm not sure if counsel to the
9 Liquidating Trust is on the phone, but we have had
10 conversations with the counsel of the Liquidating Trust, and
11 they are acceptable and amenable to the amount.

12 THE COURT: Okay. Is anyone on the phone?

13 THE CLERK: Yes, your Honor, but they're all on
14 listen-only mode.

15 THE COURT: Court Call, you can change that.

16 THE CLERK: Who are you wanting to --

17 MS. LAHAIE: Is there anyone from Diamond on the
18 phone? If not, your Honor, I'm sure that we could have them --
19 if it was a concern to your Honor, I'm sure we could have
20 them --

21 THE COURT: That is a --

22 MS. LAHAIE: -- submit --

23 THE COURT: That is a concern, so you could --

24 MS. LAHAIE: We --

25 THE COURT: That could be satisfied with an

1 affidavit.

2 MS. LAHAIE: Okay. And, your Honor, the second
3 impact that I was going to address is the other relationship
4 between the settlement here and the actions that will be
5 commenced by Litigation Trust.

6 Just to refresh your recollection, that the timing within
7 which those actions will be brought is keyed off of the day
8 that these claims are going to be resolved whether it be today
9 or now at some point in the future, whenever that order is
10 entered resolving these claims.

11 And the one thing that the settlement does not address is
12 the tax claim which we can discuss in a minute if your Honor
13 would like to.

14 But once this settlement is resolved one way or the other,
15 then there will be a 60-day clock during which the reorganized
16 trustee will have the ability to commence the causes of action
17 against Mr. Rhodes.

18 THE COURT: Okay. So, again, the liquidating trustee
19 is content -- "content" is the wrong word -- has had input and
20 reviewed the pros and the cons, et cetera, all right, and
21 because the thing --

22 MS. LAHAIE: That's correct, your Honor.

23 THE COURT: -- that concerned me was the liquidating
24 trustee has dismissed the suit against Greenway.

25 So, obviously, he had some investigation into whether or

1 not there was a cause of action or there wasn't a cause of
2 action, and the answer is yes.

3 MS. LAHAIE: That's correct, your Honor.

4 THE COURT: Okay.

5 MS. LAHAIE: I believe that Diamond who is counsel to
6 the liquidating trustee has done a fairly intensive --

7 THE COURT: Okay.

8 MS. LAHAIE: -- investigation up to this point.

9 THE COURT: Okay. And the other reason that
10 concerned me was, you know, your affidavit in support was
11 good.

12 But as so often happens, it was -- you said the right
13 words and the right things, but it was almost rote and without
14 really telling me.

15 You said, for example, the cost of litigation. Well, you
16 were at trial, so what more discovery would you have needed and
17 what would the additional cost be and what were your -- you
18 know, we didn't have a stipulated set of facts.

19 If I had had a stipulated set of facts, I could say, oh,
20 wait, well, here's these stipulated set of facts, and that
21 shows there is a big issue here.

22 MS. LAHAIE: Your Honor, I'm happy to address it to
23 the extent -- and if your Honor would like a further submission
24 on that as well.

25 As your Honor does know, this was scheduled for an

1 evidentiary hearing on December 5th. Over the course of the
2 weeks leading up to that hearing, the parties obviously were
3 engaged in dual-track process.

4 On the one hand, the parties obviously were having very
5 intense, very frequent conversations over the terms of the
6 settlement that's set forth in these documents.

7 The other track, your Honor, the parties were gearing up
8 for litigation. The parties had agreed. As your Honor may
9 recall, we had submitted a scheduling order that had a number
10 of dates that addressed both discovery dates and depositions
11 and pretrial submissions.

12 And, fortunately, your Honor, for the reorganized debtors
13 those expenses were not incurred because a settlement was
14 struck before, for example, the pretrial submissions were
15 drafted.

16 THE COURT: Okay.

17 MS. LAHAIE: The parties had gotten to the point
18 where they exchanged preliminary witness lists. And just based
19 on the number of witnesses on each parties' list and the
20 various geographic regions that those parties were located in,
21 the costs that would have been incurred just to physically
22 travel, depose them, and then make a determination as to
23 whether those witnesses would need to be called to give live
24 testimony to your Honor obviously would require the submission
25 of written affidavits, presumably, that the Court would treat

1 as directs, and then, presumably, your Honor, there would have
2 been posttrial submissions as well.

3 That whole process was a concern that the reorganized
4 debtors were very focused on. Mr. Qureshi reminds me that
5 there would have been eight depositions scheduled by the
6 parties --

7 THE COURT: Okay.

8 MS. LAHAIE: -- in connection with that trial.

9 THE COURT: So all of that stopped before -- in other
10 words, I didn't realize it 'til like right before, but that was
11 because you were working. You had a done a standstill.

12 MS. LAHAIE: That's right, your Honor.

13 THE COURT: Okay. And on the tax claims since it's
14 not being released, aren't you incurring expense -- and maybe
15 it doesn't make a difference because there's two separate
16 components, but it's huge component, \$10,000,000. Aren't you
17 incurring expenses on that appeal?

18 MS. LAHAIE: Your Honor, we will be incurring
19 expenses in connection with the appeal of the tax claim.
20 That's correct. Obviously, none of that is covered by the
21 settlement papers that are before you.

22 THE COURT: Okay. And so, in essence, you guys have
23 split the difference on the other claims.

24 MS. LAHAIE: We have, your Honor.

25 THE COURT: Okay. And was that splitting the

1 difference based upon an analysis that let's just split the
2 baby or was it based upon --

3 MS. LAHAIE: Your Honor, I can tell you in general
4 terms how it was reached. If you look at the --

5 THE COURT: And this is --

6 MS. LAHAIE: There were four --

7 THE COURT: -- always difficult because if it's not
8 approved, then you're giving away your secrets.

9 MS. LAHAIE: I know, your Honor.

10 THE COURT: On the other hand, I -- as we all know,
11 under A&C Properties, I can't just approve it just because the
12 trustee wants to. I must do --

13 MS. LAHAIE: I understand, your Honor.

14 THE COURT: -- an independent analysis.

15 MS. LAHAIE: Based on the claims that were settled,
16 you'll note there were four claims. The first as you mentioned
17 is Greenway.

18 And based on our analysis -- you know, and I can tell you
19 that the reorganized debtors did believe they had some
20 exposure. I don't know that I can quantify for you the extent
21 to which we believe we had exposure.

22 And with the scheduled claims, one thing that probably I
23 should mention, your Honor, is that the judge did sustain the
24 objections to one of our claims.

25 And the settlement before your Honor would address any

1 appeal that we understand Rhodes would have taken of that as
2 well, so the \$500,000 also includes the amounts that would have
3 been incurred to appeal that particular claim.

4 And with respect to the remaining compensation claims,
5 obviously, those would have been the subject -- and,
6 your Honor, we hadn't gotten far enough along.

7 We had enough of an understanding to know what some of the
8 books and records and materials have shown. But without having
9 gone through all of the discovery, we just --

10 THE COURT: Um-h'm.

11 MS. LAHAIE: We just didn't know what exactly the
12 ordinary-course-of-business defense would have shown.

13 Obviously, it's a very fact-intensive analysis that would
14 have required as I'm sure you understand, you know, the eight
15 depositions, the fact discovery, the pre- and the posttrial
16 depositions and briefing, and all of those things that the
17 reorganized debtors are seeking to prevent, and the last claim
18 related to litigation expenses that Rhodes allegedly paid.

19 And, quite frankly, your Honor, the reorganized debtors
20 believed they had exposure, some exposure. Again, I'm not sure
21 exactly how to quantify it, but we believed there might have
22 been some exposure on that claim as well.

23 THE COURT: Okay. Well, then the only thing that
24 concerns me is the liquidating trustee's -- I don't want to use
25 the word "consent", but concurrence if you will, and no one is

1 on the phone.

2 Court Call, can you let them on if they're on?

3 THE CLERK: Operator?

4 COURT CALL OPERATOR: On-line (indiscernible).

5 THE CLERK: Yes. Can we please have --

6 MS. LAHAIE: Diamond is the visiting one from the
7 firm, Diamond McCarthy.

8 THE CLERK: Diamond McCarthy, is someone there?

9 Is Michael Yoder?

10 MR. ROBERTS: This is Jake Roberts with
11 Diamond McCarthy.

12 THE COURT: Oh, good. Thank you. Have you been able
13 to hear --

14 MR. ROBERTS: None of my colleagues were on, but
15 there was some issues, and I think they thought it was over
16 because sound was cutting in and out. I was the only one --

17 THE COURT: Okay.

18 MR. ROBERTS: -- who's still on I believe.

19 To answer your Honor's question, yes, we have been
20 consulted and have consulted with Akin regarding this
21 settlement.

22 THE COURT: And in your opinion, it's a fair -- oh, I
23 don't want to put you in a bind. It's a reasonable settlement
24 based upon the information that your client has and based upon
25 what investigations and/or actions they may need to take in the

1 future.

2 MR. ROBERTS: Yes.

3 THE COURT: Okay. All right. And because one other
4 thing that concerned me and why I wanted the Liquidating Trust
5 was in the reorganized debtor's pleadings you said it's
6 important for the existing stakeholders to move on.

7 That troubled me because you have a duty not just to the
8 existing stakeholders which I took to mean --

9 MS. LAHAIE: The beneficiaries --

10 THE COURT: -- the new equity owners --

11 MS. LAHAIE: -- of the Trust.

12 THE COURT: -- but to the beneficiaries of the Trust
13 as well, and that's what concerned me, but that's the trustee's
14 job, and the trustee's satisfied. All right. So with that,
15 I'll approve the compromise.

16 MS. LAHAIE: Thank you, your Honor.

17 THE COURT: All right. Thank you.

18 MS. LAHAIE: We'll submit a form of order.

19 THE COURT: All right. And just one final comment.
20 I'm sorry I got emotional. I've been sick this week, not
21 enough sick that I lost my mental capacity, but it was just
22 kind of like one last straw, so I apologize. All right.

23 Thank you.

24 MS. LAHAIE: Thank you, your Honor.

25 THE COURT: Um-h'm.

1 THE CLERK: Thank you --

2 MR. QURESHI: Thank you --

3 THE CLERK: -- your Honor.

4 MR. QURESHI: -- your Honor.

5 THE CLERK: All rise.

6 (Court concluded at 09:58:13 a.m.)

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1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.

4
5
6 /s/ Lisa L. Cline

12/23/12

7 Lisa L. Cline, Transcriptionist

Date